Amendment in the Nature of a Substitute
(B22-106 ENGROSSED ORIGINAL)
Councilmembers Charles Allen and Vincent C. Gray
January 9, 2018

A BILL

22-106

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Health Occupations Revision Act of 1985 to allow pharmacists to prescribe and dispense certain contraceptives pursuant to established protocols; to amend the Women's Health and Cancer Rights Federal Law Conformity Act of 2000 to require insurers to cover certain health care services without cost-sharing, to require that insurers authorize dispensing of up to a 12-month supply of a pharmacist-prescribed and dispensed self-administered contraceptive, to provide to certain employers a religious exemption from or accommodation for the coverage of contraceptive products and services, and to require insurers to provide information regarding coverage to enrollees and potential enrollees.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Defending Access to Women's Health Care Services Amendment Act of 2017".

Sec. 2. The District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 3-1201.01) is amended by adding new paragraphs (9A) and (12B) to read as follows:

"(9A) "Long-Acting Reversible Contraceptive" means a contraceptive that requires administering less than once per cycle or month.

"(12B) "Self-administered hormonal contraceptive" means a contraceptive containing hormones approved by the U.S. Food and Drug Administration that is administered by the patient orally, transdermally, or vaginally.".

(b) Section 102(11)(A) (D.C. Official Code § 3-1201.02(11)(A)) is amended by striking the phrase "the compounding, dispensing, and labeling of drugs and devices;" and inserting the phrase "the compounding, dispensing, and labeling of drugs and devices, including self-administered hormonal contraceptives;" in its place.

(c) Section 208 (D.C. Official Code § 3-1202.08) is amended by adding a new subsection (g-1) to read as follows:

"(g-1)(1) An individual licensed to practice pharmacy pursuant to this act ~~shall~~ may prescribe and dispense up to a 12-month supply of self-administered hormonal contraceptives if certified to do so by the Board and pursuant to a written protocol established by the Board and the Board of Medicine under paragraph (2) of this subsection.

"(2) The Board and the Board of Medicine shall jointly develop and issue regulations establishing protocols for the prescription and dispensation of self-administered hormonal contraceptives. The protocols shall include the following requirements:

"(A) If the pharmacist has not already undergone training as part of the pharmacist's formal educational program, that the pharmacist complete a training program

approved by the Board and the Board of Medicine for prescribing and dispensing self-administered hormonal contraceptives;

"(B) That the patient use a self-screening tool developed by the Board and the Board of Medicine that will identify patient risk factors for the use of self-administered hormonal contraceptives, based on the current United States Medical Eligibility Criteria for Contraceptive Use developed by the Centers for Disease Control and Prevention;

"(C) That a pharmacist may determine, based on the results of the self-screening tool described in subparagraph (B) of this paragraph, when it is ~~not~~ safe to dispense a 12-month supply of self-administered hormonal contraceptives;

"(D) That when a self-administered hormonal contraceptive is prescribed and dispensed, the patient shall be provided, in a manner that ensures patient confidentiality, appropriate counseling and information on the product furnished, including dosage, effectiveness, potential side effects, safety, the importance of receiving recommended preventive health screenings, and that a self-administered hormonal contraceptive does not protect against sexually transmitted infections;

"(E) That the pharmacist refer the patient to the patient's primary care provider or reproductive health provider or, if the patient does not have a primary care provider or reproductive health provider, to a nearby clinic, upon prescribing and dispensing a self-administered hormonal contraceptive pursuant to the subsection or if it is determined that the use of a self-administered hormonal contraceptive is not recommended; and

"(F) That the pharmacist provide the patient with written material, developed by the Board and the Department of Health, describing all FDA-approved contraceptives, including Long-Acting Reversible Contraceptives.

"(3) The reimbursement to a pharmacist from an individual health plan or group health plan, and health insurance coverage through Medicaid or the D.C. Healthcare Alliance program for services required by regulations issued pursuant to paragraph (2) of this subsection, shall be limited to an amount determined through regulation by the Department of Insurance, Securities, and Banking.

"(4) This section does not alter the requirement under federal and District of Columbia law that the provision of contraceptive drugs, devices, products, and services, including contraceptive counseling, shall be covered without cost-sharing, which includes the prescribing and provision of contraceptives by any in-network provider, including a pharmacist.

"(5) The Board shall maintain a list of all pharmacists certified to prescribe and dispense contraception without a prescription, including the location of the pharmacy where the pharmacist currently practices, and make that list readily accessible to the public.

"(6) A pharmacy shall display in stores and online a list of the times during which a pharmacist certified to prescribe and dispense contraception is available.

"(7) The Board shall provide to all licensed pharmacists annual notice of the requirements of this subsection, including opportunities for training.

"(9) The Board and the Board of Medicine, in consultation with the American

Congress of Obstetricians and Gynecologists, shall jointly develop and promulgate regulations to implement the provisions of this subsection by January 1, 2019.".

Sec. 3. The Women's Health and Cancer Rights Federal Law Conformity Act of 2000, effective April 3, 2001 (D.C. Law 13-254; D.C. Official Code § 31-3831 *et seq.*), is amended as follows:

(a) Section 5a (D.C. Official Code § 31-3834.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "Medicaid shall provide benefits that allow for the dispensing of up to a 12-month supply of a covered prescription contraceptive at one time." and inserting the phrase "Medicaid and the D.C. Healthcare Alliance Program shall provide coverage for a supply of contraceptives intended to last over the course of a 12-month period, that shall be dispensed all at once or over the course of the 12 months at the patient's election, including for over-the-counter contraceptives and contraceptives obtained from a licensed pharmacist without a prescription pursuant to section 208(g-1) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202.08(g-1)), provided that the DC Healthcare Alliance program shall not be required to provide coverage for a supply of contraceptives intended to last longer than the period of recertification for the DC Healthcare Alliance. The costs of any consultation by the pharmacist shall also be covered." in its place.

(2) Subsection (c) is repealed.

(b) A new section 5b is added to read as follows:

"Sec. 5b. Coverage of preventive health services.

"(a) An individual health plan or group health plan and health insurance coverage through Medicaid or the D.C. Healthcare Alliance program shall provide coverage for, and shall not impose any cost-sharing requirements on, women for the following preventive health services and products:

"(1)(A) Breast cancer screening;

"(B) Breast feeding support, services, and supplies;

"(C) Screening for cervical cancer, including HPV testing;

"(D) Screening for gestational diabetes;

"(E) Screening and counseling for HIV;

"(F) Screening and counseling for interpersonal and domestic violence;

"(G) Screening and counseling for sexually-transmitted diseases;

"(H) Screening and counseling for Hepatitis B and C;

"(I) Well-woman preventive visits, including visits to obtain necessary preventive care, preconception care, and prenatal care;

"(J) Folic acid supplementation;

"(K) Breast cancer chemoprevention counseling and preventive medications;

"(L) Risk assessment and genetic counseling and testing using the Breast Cancer Risk Assessment tool approved by the National Cancer Institute; and

"(M) Rh incompatibility screening;

"(2) Those evidence-based items or services that have in effect a rating of "A" or "B" in the recommendations of the U.S. Preventive Services Task Force as of September 19, 2017; and

"(3) Any additional health services or products identified ~~in a Mayor's order~~ by rules issued pursuant to subsection (c) of this section.

"(b) A health insurer and health insurance coverage through Medicaid or the D.C. Healthcare Alliance program offering health insurance coverage exclusively for prescription drugs shall provide coverage for, and shall not impose any cost-sharing requirements for women for, contraceptives, including over-the-counter contraceptives and contraceptives prescribed and dispensed by a pharmacist, and the following:

"(1) Those evidence-based prescription-drug items or related services that have in effect a rating of "A" or "B" in the recommendations of the United States Preventive Services Task Force as of September 19, 2017; and

"(~~3~~2) Any additional contraceptive drug products identified ~~in a Mayor's order~~ by rules issued pursuant to subsection (c) of this section.

"(c)(1) Within 30 days of the effective date of the Defending Access to Women's Health Care Services Amendment Act of 2017, passed on 2nd reading on January 9, 2018 (Enrolled version of Bill 22-106), the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*),

shall ~~publish in the D.C. Register an order~~ issue rules listing the items and services defined in subsections (a) and (b) of this section to be covered without imposing any cost-sharing requirements.

"(2) The Mayor shall amend the ~~order~~ rules required by this subsection as necessary to:

"(A) Include additional preventive services or products for women or expansions of covered preventive services or products for women identified by the United States Preventive Services Task Force or the Health Resources and Services Administration of the United States Department of Health and Human Services after September 19, 2017; and

"(B) Remove items or services defined in subsections (a) and (b) of this section that a federal agency determines to pose a significant safety concern, consistent with the requirements of 45 C.F.R. § 147.130(b).".

(c) A new section 5c is added to read as follows:

"Sec. 5c. Coverage of additional preventive health services

"(a) Health insurance coverage through Medicaid or the DC Healthcare Alliance program shall also provide coverage for and shall not impose any cost-sharing requirements for the following:

"(1) Voluntary sterilization procedures for women;

"(2)(A) All contraceptive products approved by the Food and Drug Administration, including emergency contraception

"(B) If there is a therapeutic equivalent of an FDA-approved contraceptive drug, device, or product, coverage shall also include either the original FDA-approved contraceptive drug, device, or product or at least one of its therapeutic equivalents, without imposing any cost-sharing requirements.

"(C) If the covered contraceptive drug, device, or product is deemed medically inadvisable by a provider, the health insurer shall defer to the determination and judgment of the attending provider and provide coverage for the alternative prescribed contraceptive drug, device, or product without imposing any cost-sharing requirements;

"(D) Nothing in this section shall prohibit a health insurer from requiring the use of a generic prescription drug when providing coverage for preventive contraceptive services, so long as such health insurer:

"(i) Has a process for a member to seek medically necessary coverage of a covered brand name contraceptive drug as determined by the member's prescribing provider; and

"(ii) Provides coverage for a brand name contraceptive drug when there is no generic substitute available in the market.

"(3) Contraceptive services including consultation with a pharmacist, patient education, and counseling on contraception; and

"(4) Follow-up services related to the drugs, devices, products, and procedures covered under this section, including management of side effects, counseling for continued adherence, and device insertion and removal.

"(b) Beginning on January 1, 2019 or the next date when carrier forms are approved, whichever is earlier, an individual health plan or group health plan shall also provide coverage for and shall not impose any cost-sharing requirements for all products and services listed in subsection (a) of this section.".

(d) A new section 5d is added to read as follows:

"Sec. 5d. Religious exemption and accommodation.

"(a)(1) A religious employer organized and operating as a nonprofit entity and referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986 may be exempt from any requirement to cover contraceptive products and services under section 5b and D.C. Official Code § 31-3834.01.

"(2) A religious employer claiming an exemption under this subsection shall provide its employees and prospective employees reasonable and timely notice of the exemption prior to enrollment with the plan, and the notice shall list the contraceptive products and services for which the employer does not provide coverage.

"(3) Nothing in this section shall be construed to allow for the exclusion of coverage for contraceptive supplies as prescribed by a provider, acting within his or her scope of practice, for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or

eliminating symptoms of menopause, or for contraception that is necessary to preserve the life or health of an enrollee.

"(b)(1) Nothing in this act shall be construed to require an employer to provide coverage for contraceptive products or services through its employer-based group health plan, provided that the employer has ~~received~~ provided to its group health insurance issuer a notice of request for accommodation, in a form and manner specified by the Mayor, and the insurer has certified that the employer meets the requirements of subsection (c) of this section ~~from the District of Columbia Department of Health~~.

"(2) Beginning on January 1, 2019, and on a quarterly basis thereafter, a group health insurance issuer shall notify the Department of Insurance, Securities, and Banking which employers have been granted an accommodation pursuant to subsection (c) of this section.

"(~~2~~3) An employer that receives an ~~notice of~~ accommodation pursuant to subsection (c) of this section ~~from the Department of Health~~ shall provide, through its employer-based plan, coverage for contraceptive supplies as prescribed and dispensed by a provider, acting within her or her scope of practice, for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, and for contraception that is necessary to preserve the life or health of an enrollee.

"(c) ~~The Department of Health~~ A group health insurance issuer shall ~~issue a notice of~~ provide an employer with an accommodation to the requirements of this act upon receipt of a self-certification, in a form and manner specified by the Mayor, that the employer is:

"(1) A nonprofit organization that holds itself out as a religious organization and objects to covering some or all of the contraceptive services on account of its sincerely held religious beliefs; or

"(2) A closely-held for-profit entity, provided that its highest governing body (such as its board of directors, board of trustees, or owners, if managed directly by its owners) has adopted a resolution or similar action establishing that it objects to covering some or all of the contraceptive services on account of the owners' sincerely held religious beliefs.

"(d)~~(1) An employer seeking an accommodation pursuant to subsection (b) shall provide to its group health insurance issuer a copy of the notice of accommodation.~~

~~"(2)~~ Upon receipt of a ~~valid~~ notice of request for accommodation that conforms to the requirements of subsection (c) of this section, a group health insurance issuer shall:

~~"~~(A1) Exclude contraceptive coverage from the group health insurance coverage provided in connection with the employer's group health plan; and

~~"~~(~~B~~2) Provide separate payments for any contraceptive products or services required to be covered under ~~this~~ sections 5a and 5b without imposing any cost-sharing requirements or any other fee directly or indirectly on the employer, the group health plan, or plan participants of beneficiaries.

~~"(3)(A) A group health insurance issuer that provides payment for contraceptive services pursuant to paragraph (2)(B) of this subsection shall provide coverage for all products and services required by this act and shall not impose any cost-sharing requirements or impose~~

~~any other fee directly or indirectly on the employer, the group health plan, or plan participants or beneficiaries.~~

~~"(B) The group health insurance issuer shall segregate premium revenue collected from the employer from monies used to provide payments for contraceptive products or services pursuant to paragraph (2)(B) of this subsection.~~

"(d) For purposes of this section, the term "closely-held for-profit entity" means an entity that:

"(1) Is not a nonprofit entity;

"(2) Has no publicly traded ownership interests of any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934; and

"(3) Has more than 50 percent of the value of its ownership interest owned directly or indirectly by five or fewer individuals, or has an ownership structure that is substantially similar thereto, as of the date of the entity's self-certification pursuant to subsection (c) of this section.".

(e) A new section 5e is added to read as follows:

"Sec. 5e. Notice of rights to healthcare coverage.

"(a) An insurer that is subject to sections 5a or 5b shall make readily accessible to enrollees and potential enrollees information regarding:

"(1) Full and accurate information relevant to coverage and cost-sharing for contraceptive services by each health insurance plan, including an explanation of an insured's

financial responsibility for payment of premiums, coinsurance, copayments, deductibles and any other charges;

"(2) The coverage of other services, drugs, devices, products and procedures described in sections 5a and 5b; and

"(3) The right to receive up to a 12-month supply of contraception from a licensed pharmacist without a prescription or cost-sharing requirements.

"(b)(1) The insurer shall provide the information described in subsection (a) of this section in a consumer-friendly format:

"(A) That can be viewed on the insurer's public website through a clearly identifiable link or tab without requiring an individual to create or access an account or enter a policy or contract number;

"(B) By email or letter within 14 days after a request by an enrollee; and

"(C) Within one year of the effective date of the Defending Access to Women's Health Care Services Amendment Act of 2017, passed on 2nd reading on January 9, 2018 (Enrolled version of Bill 22-106), or whenever written materials are reprinted, whichever is sooner, in written materials that explain benefits or coverage that are provided to enrollees and potential enrollees, including in an addendum to a summary of benefits and coverage.

"(2) This subsection shall be construed consistently with section 2715 of the Public Health Services Act, as amended by the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 132; 42 U.S.C. § 300gg-15).

"(c) The Department of Insurance, Securities and Banking shall provide yearly notice to health insurers operating in the District of Columbia of their obligation to provide coverage for services, drugs, devices, products and procedures described in sections 5a and 5b.".

Sec. 4. Applicability.

(a) Sections 2(c) shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this section.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

OFFICE OF THE GENERAL COUNSEL
Council of the District of Columbia
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MEMORANDUM

TO: **Councilmember Charles Allen**

FROM: **John Hoellen, Deputy General Counsel**

DATE: **January 9, 2018**

RE: **Legal sufficiency determination for Amendment in the Nature of a Substitute to Bill 22-106, the Defending Access to Women's Health Care Services Amendment Act of 2017**

The measure is legally and technically sufficient for Council consideration.

This Amendment in the Nature of a Substitute ("ANS") to Bill 22-106, the Engrossed version of the Defending Access to Women's Health Care Services Amendment Act of 2017, clarifies that the list of health services and products that the bill requires insurers to cover without cost-sharing shall be issued by rulemaking. Additionally, the ANS shifts the responsibility for processing requests for a religious-based accommodation from the Department of Health to insurance providers, and imposes a requirement upon insurers to notify the Department of Insurance, Securities, and Banking on a quarterly basis which employers have been granted an accommodation. Finally, the ANS removes a requirement that insurers segregate premium revenue collected from employers that have received an accommodation to the bill's requirements from the monies used to provide alternate coverage for an employee's contraceptives.

I am available if you have any questions.

COUNCIL OF THE DISTRICT OF COLUMBIA
Office of the Budget Director

Jennifer Budoff
Budget Director

FISCAL IMPACT STATEMENT

TO: **The Honorable Phil Mendelson**
Chairman, Council of the District of Columbia

FROM: **Jennifer Budoff - Budget Director**

DATE: **January 8, 2018**

SHORT TITLE: **B22-106 "Defending Access to Women's Health Care Services Amendment Act of 2017"**

TYPE: **Amendment in the Nature of a Substitute**

REQUESTING OFFICE: **Councilmember Charles Allen**

Conclusion
This amendment in the nature of a substitute does not have an impact on the District's budget or the financial plan, because there is no cost associated with implementing this legislation. However, the underlying bill remains subject in inclusion in the District's budget and financial plan.[1]

Background
This amendment in the nature of a substitute makes three substantive changes to bill. First, as drafted the bill requires the Mayor to publish in the D.C. Register a mayor's order listing health services and products that the bill requires insurers to cover without cost-sharing. The ANS changes this process to a formal rulemaking. Second, the ANS shifts the burden of processing requests for a religious-based accommodation from the Department of Health to insurance providers. The ANS requires insurers to notify the Department of Insurance, Securities, and Banking quarterly which employers have been granted an accommodation; this will create a public record of requests for accommodations, which does not currently exist at the local level. Third, the ANS removes a requirement that insurers segregate premium revenue collected from employers that have received an accommodation to the bill's requirements from the monies used to provide alternate coverage for employee's contraceptives.

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[1] Office of the Chief Financial Officer, Fiscal Impact Statement – Bill 22-106 Defending Access to Women's Health Care Services Amendment Act of 2017 (November 2, 2017), available at http://app.cfo.dc.gov/services/fiscal_impact/search.asp (last visited January 8, 2018).

Analysis of Impact on Spending
This emergency has no impact on spending.

Analysis of Impact on Revenue
This emergency has no impact on revenue.